REDACTED – FOR PUBLIC INSPECTION

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August 16, 2019

VIA ELECTRONIC FILING

Marlene H. Dortch, Secretary
Federal Communications Commission
445 12th Street, S.W., Room TW-A325
Washington, DC 20554

Re: REDACTED FOR PUBLIC INSPECTION
***beIN Sports, LLC v. Comcast Cable Communications, LLC and Comcast Corporation*, MB Docket No. 18-384, File No. CSR-8972-P**

Dear Ms. Dortch:

Enclosed is the Public version of the Opposition to Application for Review ("Opposition") of Comcast Corporation and Comcast Cable Communications, LLC (together, "Comcast") in the above-captioned proceeding.

Comcast also is serving a copy of this Public Opposition via electronic mail to counsel for beIN Sports, LLC.

If you have any questions, please do not hesitate to contact me.

Respectfully submitted,

Michael D. Hurwitz
Counsel for Comcast Corporation and Comcast Cable Communications, LLC

Enclosures

cc: Pantelis Michalopoulos, Steptoe & Johnson LLP (via electronic mail)

REDACTED – FOR PUBLIC INSPECTION

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	)	
	)	
beIN SPORTS, LLC,	)	
Complainant,	)	
	)	MB Docket No. 18-384
vs.	)	File No. CSR-8972-P
	)	
COMCAST CABLE COMMUNICATIONS, LLC And COMCAST CORPORATION,	)	
Defendants.	)	
	)	

OPPOSITION TO APPLICATION FOR REVIEW

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COMCAST CABLE COMMUNICATIONS, LLC And COMCAST CORPORATION,	)	
Defendants.	)	
	)	

OPPOSITION TO APPLICATION FOR REVIEW

Defendants Comcast Corporation and Comcast Cable Communications, LLC (together, "Comcast") submit this Opposition to the "Emergency" Application for Review ("Application") filed by beIN Sports, LLC ("beIN"). The Application seeks review of the Media Bureau's July 1, 2019 Order (the "Order") dismissing with prejudice in part and denying in part beIN's second program carriage complaint against Comcast (the "Second Complaint").[1] The Bureau properly applied the law in rejecting the Second Complaint. Notwithstanding its protestations to the contrary in the Application, beIN had previously stipulated that this case should be decided on the merits based on the extensive written record – which is exactly what the Bureau correctly did. beIN's Application should be denied.

[1] *See* Emergency Application of beIN Sports, LLC for Review, MB Docket No. 18-384 (Aug. 1, 2019) ("Application"); *beIN Sports, LLC v. Comcast Cable Commc'ns and Comcast Corp.*, Memorandum Opinion and Order, DA 19-623 (MB July 1, 2019) ("Order"); beIN Sports, LLC Program Carriage Complaint, MB Docket No. 18-384 (Dec. 13, 2018) ("Second Compl.").

I. INTRODUCTION AND SUMMARY

In its Application, beIN strains to conjure various procedural and substantive errors by the Media Bureau in dismissing its program carriage complaint without a referral to an administrative law judge ("ALJ"). In fact, the Bureau acted well within its discretion in ruling on the merits based on the written record, which beIN itself had *urged* the Bureau to do. And, as the Order makes clear, the legal and factual grounds for its finding that "Comcast did not discriminate on the basis of affiliation or non-affiliation" against beIN were straightforward and substantial.[2] It was not a close call. The Bureau properly found, on the merits, that Comcast's reasons for rejecting beIN's exorbitant demands for higher fees and broader carriage were legitimate and non-discriminatory – a "straight up financial decision" about the limited appeal of beIN's niche networks – and were substantiated with compelling evidence showing significant cost *savings* from dropping the beIN networks relative to carrying them on the terms beIN demanded.

In asking the Commission to overturn the Order, beIN makes several fundamental mischaracterizations of the applicable law and factual record:

- *First*, beIN argues that the Bureau was somehow duty-bound to designate this case for hearing. But none of the "precedent" beIN cites is controlling, or even apt. The Commission's program carriage rulemaking orders vest the Bureau with discretion to dispose of cases on the pleadings, as it did here. beIN also omits from its Application that it had actually stipulated, multiple times, that the Bureau could and should decide this case on the pleadings. It is only now that beIN disagrees with the Bureau's decision that it is arguing the opposite position.

- *Second*, beIN wrongly claims that the Bureau misapplied the D.C. Circuit's *Tennis Channel* precedent. Consistent with *Tennis Channel* and the Commission's more recent *GSN* decision, the Bureau appropriately found Comcast had demonstrated that there

[2] Order ¶ 3.

would be no net benefit to carrying the beIN networks on the terms beIN demanded, and that there would be, in fact, a high likelihood of commercial harm to Comcast.

- *Third*, despite having stipulated to a ruling based on the written record, beIN now contends that it was deprived of discovery that might have called into question Comcast's net benefit analysis. Yet beIN never even proffered the evidence it claimed to have on hand that purportedly would demonstrate a net benefit to Comcast. And, in all events, the possibility of theoretically relevant information in Comcast's possession is speculative and irrelevant "[i]n light of the 'clear negative' of an increased licensing fee [and] the failure to demonstrate any 'reason to expect a net benefit' from Comcast's continued carriage of beIN on any of the terms proposed by beIN Sports."[3] beIN's attempt to search for potential holes in Comcast's net benefit analysis is baseless and would not alter that conclusion. Nothing in the program carriage rules requires that a defendant be subject to discovery, let alone when the record is as clear as it is here.

- *Fourth*, beIN argues that the Bureau was wrong to find that beIN en Español ("beIN-E") and Universo are not similarly situated. But beIN provides no basis to alter the conclusion, based on beIN's own account of each network's content, that beIN-E is fundamentally a sports network and Universo is an entertainment network (*not* a sports network).

- *Fifth*, beIN claims that it was prejudiced by the inability of one of its experts, Eric Sahl, to review and respond to certain Highly Confidential Information ("HCI") that Comcast submitted about its viewership analyses. But the specific category of HCI to which Mr. Sahl sought access, as represented by beIN, involved content guarantees in third-party programming agreements. It had nothing to do with Comcast's viewership analyses. Moreover, under the terms of the parties' agreed-to protective order, Mr. Sahl plainly did not qualify to access the terms of these third-party programming agreements (or any other HCI) due to his involvement in competitive decision-making on behalf of another client that competes with Comcast. In all events, beIN was granted ample additional time beyond the usual 20 days – and had more than enough other experts with access to HCI – to address this issue as part of its Reply. The voluminous Reply that beIN submitted, which featured testimony from two new experts (in addition to Mr. Sahl), reflected this extraordinary accommodation.

As a last-ditch gambit, beIN asks that this adjudicatory matter be converted from a restricted to a permit-but-disclose proceeding. But the case does not involve any "broadly applicable policy" that could possibly justify such a rare change in status, and beIN makes no

[3] *Id.* ¶ 27.

persuasive showing otherwise. Nor can this request be squared with beIN's request (albeit unsupported)[4] for resolution of its claims on an "emergency" basis.

For these reasons, as further explained below, the Commission should deny beIN's Application and affirm the Order under review.

II. THE MEDIA BUREAU ACTED WELL WITHIN ITS DISCRETION IN DECIDING BEIN'S SECOND COMPLAINT ON THE MERITS, RATHER THAN REFERRING THE CASE FOR AN UNNECESSARY AND COSTLY EVIDENTIARY HEARING.

There is no basis for beIN's argument that the Bureau should have referred this case to an ALJ simply because the Order involved factual determinations. As noted in the Order, beIN itself stipulated that its Second Complaint "supplies the Bureau with ample information to allow the Bureau to not only make a *prima facie* determination but also to decide the case on the merits without discovery, and without need to refer the complaint to an administrative law judge."[5] Now that it has lost on the merits, beIN reverses course to argue for the very hearing and discovery that it previously agreed were unnecessary.

As an initial matter, beIN is barred from even taking this inconsistent position under the doctrine of judicial estoppel. This doctrine "protect[s] the integrity of the judicial process . . . by prohibiting parties from deliberately changing positions according to the exigencies of the moment."[6] The Commission has embraced this doctrine in adjudicatory settings, explaining that, "where a party assumes a certain position in a legal proceeding, and succeeds in maintaining that

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[4] In its request for "emergency" treatment, beIN points to the "drama surrounding Real Madrid's effort to regenerate itself with young virtuosos after a string of heavily-publicized disappointments that reached a crescendo with a 7-3 defeat to Atlético Madrid," and similar hyperbole – which only underscores the limited, commercial nature of this dispute and beIN's continued niche focus on certain international soccer teams. Application at 6-7.

[5] Order ¶ 26 n.92 (citing Second Compl. ¶ 15); *see also* beIN Sports, LLC Program Carriage Complaint, MB Docket No. 18-90, ¶ 19 (Mar. 15, 2018) ("First Compl.") (same).

[6] *New Hampshire v. Maine*, 532 U.S. 742, 749-50 (2001) (internal quotations omitted).

position, he may not thereafter, simply because his interests have changed, assume a contrary position."[7] The Commission should not countenance beIN's about-face now that beIN disagrees with the result of the very procedural disposition for which it advocated.

Even if beIN's abrupt change in position were not otherwise estopped, its procedural and due process claims are meritless. It is squarely within the Bureau's authority and discretion to decide program carriage cases on the merits, without ordering discovery, based on the complaint, answer, and reply. Congress directed the Commission to resolve program carriage complaints expeditiously,[8] and the Commission developed "a streamlined complaint process [to enable it] to settle uncomplicated complaints quickly" in order to fulfill this directive.[9]

Under this process, the Bureau is directed "to dispose of as many complaint cases as possible on the basis of a complaint, answer, and reply. Discovery will not be permitted as a matter of right, but on a case-by-case basis as deemed necessary by the Commission staff reviewing the complaint."[10] The Bureau's discretion includes determining when a written

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[7] *Telcordia Technologies, Inc. Petition to Reform Amendment 57 and to Order a Competitive Bidding Process for Number Portability Administration, et al.*, Order, 30 FCC Rcd. 3082 ¶ 52 n.194 (2015) (quoting *New Hampshire*, 532 U.S. at 749); *see also id.* ¶ 52 ("Principles of waiver and estoppel prevent [a party] from objecting" to Commission procedures that such party "helped shape . . . now that those processes have not yielded the result it expected or desired."); *Time Warner Cable, A Div. of Time Warner Entm't Co., L.P.*, Order on Reconsideration, 21 FCC Rcd. 9016 ¶ 13 (MB 2006). ("Time Warner thus obtained regulatory relief from the Commission less than two weeks ago based upon an interpretation . . . that is flatly inconsistent with the interpretation Time Warner offers now. We will not countenance such behavior by parties seeking relief from the Commission. . . . Accordingly, we find that Time Warner[']s contradictory argument] is estopped.").

[8] *See* 47 U.S.C. § 536(a)(4).

[9] *See Implementation of Sections 12 and 19 of the Cable Television Consumer Protection and Competition Act of 1992 and Development of Competition and Diversity in Video Programming Distribution and Carriage,* First Report and Order, 8 FCC Rcd. 3359 ¶ 17 (1993) ("*1993 Program Carriage First R&O*").

[10] Order ¶ 26 n.92 (citing *1993 Program Carriage First R&O* ¶ 75); *see also* 47 C.F.R. § 76.1302(i) ("For program carriage complaints that the Chief, Media Bureau decides on the merits based on the complaint, answer, and reply without discovery, the Chief, Media Bureau shall release a decision on the merits within sixty (60) calendar days after the Chief, Media Bureau's *prima facie* determination."); *Revision of the Commission's Program Carriage Rules,* Second Report and Order and Notice of Proposed Rulemaking, 26 FCC Rcd. 11494 ¶ 6 (2011) ("*2011 Program Carriage Order*") ("[I]f the Media Bureau determines that the complainant has made a *prima facie*

evidentiary record is sufficient to rule on the merits of a program carriage complaint, without the need for credibility or other factual determinations based on witness testimony at a hearing.[11] As the Commission has emphasized, "if the Media Bureau determines that the complainant has established a *prima facie* case but the defendant MVPD provides legitimate and non-discriminatory business reasons in its answer for its adverse carriage decision, the Media Bureau might conclude . . . that the complaint can be resolved on the merits based on the pleadings."[12] That is precisely what the Bureau did here.

The Commission has a long history of exercising its discretion to decline to refer cases for an evidentiary hearing in many other contexts, recognizing the administrative burdens and costs that unnecessary hearings pose for the agency and parties.[13] Indeed, Chairman Pai recently

showing and the record is sufficient to resolve the complaint, the Media Bureau will rule on the merits of the complaint based on the pleadings without discovery.").

[11] *See 1993 Program Carriage First R&O* ¶ 123; *see also* 47 C.F.R. § 76.6(a)(3) ("Facts must be supported by relevant documentation or affidavit."). And in this case, the Bureau had the added benefit of recent precedent from the D.C. Circuit in *Tennis Channel* and the Commission in *GSN* which provide clear guidance with respect to the question of what evidence is sufficient to demonstrate that a defendant has acted based on legitimate business reasons. *See Comcast Cable Commc'ns, LLC v. FCC*, 717 F.3d 982, 987 (D.C. Cir. 2013) ("*Tennis Channel*"); *Game Show Network, LLC, v. Cablevision Sys. Corp.*, Memorandum Opinion and Order, 32 FCC Rcd. 6160 ¶¶ 77-82 (2017) ("*GSN Order*").

[12] *2011 Program Carriage Order* ¶ 17.

[13] *See, e.g.*, *Family Voice Commc'ns, LLC for Renewal of License Station KLSX (FM), Rozet, WY*, Hearing Designation Order, 33 FCC Rcd. 4654 ¶ 11 (2018) (finding that a "paper" hearing would be appropriate to determine whether license renewal applications should be granted, noting that "[t]he Commission has repeatedly observed that trial-type hearings impose significant burdens and delays, both on the applicants and the agency"); *Am. Tel. & Tel. Co. Revisions to Tariff FCC No. 267, Dataphone Digital Service (DDS), Transmittal No. 12790*, Memorandum Opinion and Order, 67 F.C.C.2d 1195 ¶ 99 (1978) (finding that "unnecessary hearings, and hearings which are unnecessarily prolonged by the search for additional information that could be filed at the outset, burden both the Commission and the public"); *Applications of Orange County Radiotelephone Service, Inc. for A Construction Permit to Modify the Facilities of Station KMB 304 in the Domestic Public Land Mobile Radio Service, Near Los Angeles, Calif.*, Memorandum Opinion and Order, 5 F.C.C.2d 848 ¶ 4 (1966) (declining to conduct a further hearing to resolve parties' issues with broadcast licensee's applications to modify facilities because such a hearing "would impose an unwarranted and unnecessary administrative burden upon the parties as well as upon the Commission's staff and processes"). The Commission also routinely decides program access cases without a hearing. *See, e.g.*, *EchoStar Commc'ns Corp.*, Memorandum Opinion and Order, 16 FCC Rcd. 4949 (2001); *Bell Atl. Video Servs. Co. v. Rainbow Programming Holdings, Inc.*, Memorandum Opinion and Order, 12 FCC Rcd. 9892 (CSB 1997).

announced a proposal to expedite the Commission's hearing processes by expanding the use of written hearings conducted without any live testimony.[14] And other federal agencies – including agencies that routinely handle factual disputes – similarly exercise discretion to decide the merits of disputes based on the written record rather than through burdensome, unnecessary hearings.[15]

beIN points to the Commission's *Herring Broadcasting* order in 2009 to support its about-face position that this matter should have been referred to an ALJ. But *Herring Broadcasting* addressed an entirely different situation: The Bureau had *already* designated the multiple complaints at issue for a hearing, then attempted to terminate the proceedings after the ALJ set a hearing date beyond the Hearing Designation Order's 60-day deadline for issuing a recommended decision.[16] That decision turned on its particular facts. It did not establish a general rule that all program carriage cases where the Bureau finds that a complainant has met its *prima facie* burden are required to be sent to an ALJ, as beIN wrongly suggests. Indeed, the Commission's controlling precedent cited above – including notably its 2011 *Program Carriage Order*, which post-dated *Herring Broadcasting* – makes clear that the Bureau can decide such cases on the pleadings *without* a hearing. And the Commission's more recent experience in the protracted *GSN v. Cablevision* case underscores why the Bureau need not refer cases to an ALJ that can be decided more expeditiously based on the pleadings.[17]

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[14] *See* Press Release, FCC, *FCC Chairman Introduces Two New Proposals To Modernize FCC Processes* (July 22, 2019), https://docs.fcc.gov/public/attachments/DOC-358610A1.pdf.

[15] *See, e.g.*, *Koch Gateway Pipeline Co.*, 76 FERC ¶ 61227, 62125 (Aug. 30, 1996) (declining a request for a hearing to address parties' issues with pipeline company's revised tariff sheets); *National Duct Corp.*, 265 NLRB 413 (1982) (finding an evidentiary hearing to be unwarranted where party claiming election interference "did not meet its burden of demonstrating by specific evidence that objectionable conduct occurred").

[16] *See Herring Broad., Inc. d/b/a WealthTV, et al. v. Time Warner Cable, Inc., et al.*, Order, 24 FCC Rcd. 1581 (2009); *see also Herring Broad., Inc. d/b/a WealthTV, et al. v. Time Warner Cable, Inc., et al.*, Memorandum Opinion and Hearing Designation Order, 23 FCC Rcd. 14787 (MB 2008).

[17] GSN filed its initial program carriage complaint against Cablevision in October 2011, alleging that Cablevision's decision to re-tier GSN constituted unlawful discrimination on the basis of affiliation. The Bureau

beIN's claim that its due process rights have been violated by the Bureau's decision is equally meritless. The D.C. Circuit has held that "the decision of whether or not hearings are necessary or desirable is a matter in which the Commission's discretion and expertise is paramount."[18] Further, in a case beIN itself cites for its due process claim, the D.C. Circuit has made clear that it will "review agency denials of discovery" with "extreme deference."[19] For this same reason, "'courts are not free to impose upon agencies specific procedural requirements that have no basis in the APA' or statute."[20] As the D.C. Circuit has recognized, it is entirely consistent with the APA that Commission "[c]omplaint proceedings . . . unlike court litigation or administrative-trial type hearings, are often resolved solely on the written pleadings."[21]

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referred the case to a hearing before the ALJ in a 2012 decision. *See Game Show Network, LLC v. Cablevision Sys. Corp.*, Hearing Designation Order and Notice of Opportunity for Hearing for Forfeiture, 27 FCC Rcd. 5113 (MB 2012). Following discovery and a period of abeyance, a hearing was conducted in 2015. After the trial concluded, the Enforcement Bureau, which had been a party to the proceeding, urged the ALJ to find that Cablevision had not violated the program carriage rules. Nonetheless, in 2016, the ALJ issued a decision finding that the retiering of GSN on the premium sports tier was based on GSN's non-affiliation, and that Cablevision's asserted business justifications for the move were pretextual. *See GSN Order* ¶¶ 9-22. In July 2017 – almost six years after GSN filed its program carriage complaint – the full Commission reversed the ALJ's decision and denied GSN's complaint against Cablevision, concluding that GSN and Cablevision's affiliated networks were not similarly situated and that, in all events, Cablevision's action in retiering GSN was based on legitimate business reasons rather than on the basis of GSN's non-affiliation. *See id.* Such a lengthy process – which Commissioner O'Rielly called "not acceptable under any circumstances" – was certainly not what Congress intended when it directed the Commission to resolve program carriage complaints expeditiously. *See id.* at 6191 (Statement of Commissioner O'Rielly).

[18] *Columbus Broad. Coal. v. FCC*, 505 F.2d 320, 324 (D.C. Cir. 1974) ("We must examine the Commission's statement of reasons for denial, and if the Commission's action was not arbitrary, capricious or unreasonable, we must affirm."); *see also Capitol Broad. Co. v. FCC*, 324 F.2d 402, 405 (D.C. Cir. 1963) (likewise affirming that a hearing is unnecessary where "nothing suggests . . . that [the] hearing would produce additional facts that might change the result").

[19] *Sw. Airlines Co. v. TSA*, 554 F.3d 1065, 1074 (D.C. Cir. 2009) (internal citations omitted).

[20] *Hi-Tech Furnace Sys., Inc. v. FCC*, 224 F.3d 781, 790 (D.C. Cir. 2000) (quoting *Pension Benefit Guar. Corp. v. LTV Corp.* 496 U.S. 633, 654 (1990)). Moreover, "[a]gencies are free to grant additional procedural rights in the exercise of their discretion, but reviewing courts are generally not free to impose them if the agencies have not chosen to grant them." *Vt. Yankee Nuclear Power Corp. v. NRDC*, 435 U.S. 519, 524 (1978).

[21] *Hi-Tech Furnace Systems, Inc.*, 224 F.3d at 789 (finding that "[n]othing in either the Communications Act or the APA entitles a party" to the discovery demanded by petitioner).

For example, in *EchoStar*, the D.C. Circuit upheld decisions first by the Media Bureau and then by the Commission to (a) dismiss a program access complaint against Comcast because "a valid business reason necessarily precluded holding that Comcast acted" in violation of the Commission's rules; and (b) deny EchoStar's request for discovery.[22] On the latter point, in particular, the court found that the denial of discovery did not violate EchoStar's right to due process, especially in light of EchoStar's "failure to submit contradictory evidence" to dispute Comcast's fact testimony.[23] There can be no question here that – after filing *three* largely duplicative complaints, with multiple opportunities to submit relevant evidence, and consuming significant resources of the Commission and parties – beIN has received ample due process.

In summary, even if beIN were not estopped from challenging the very procedural course that it had previously advocated, the Bureau was well within its discretion under the program carriage rules and the APA to decide this case on the merits based on the pleadings. The Bureau rightly concluded that allowing discovery or referring beIN's claims to an ALJ was unnecessary and would waste the time and resources of both the Commission and the parties.

III. THE EVIDENCE IN THE RECORD FULLY SUPPORTED A FINDING FOR COMCAST ON THE MERITS, CONSISTENT WITH JUDICIAL AND COMMISSION PRECEDENT.

A. The Bureau Correctly Applied the *Tennis Channel* and *GSN* Precedent to This Case.

beIN next contends that the Bureau misconstrued the *Tennis Channel* precedent in applying its holding to the facts in this case. That is wrong. The D.C. Circuit held in *Tennis Channel* that differential treatment of a non-affiliated network is not discriminatory if a

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[22] *See EchoStar Commc'ns Corp. v. FCC*, 292 F.3d 749, 755 (D.C. Cir. 2002).

[23] *Id.* at 756. beIN has similarly failed to submit contradictory evidence of the nature discussed in *EchoStar*. *See* Order ¶ 27 (explaining that beIN "fail[ed] to demonstrate any 'reason to expect a net benefit' from Comcast's continued carriage of beIN on any of the terms proposed by beIN"); *see also infra* Section III.B.

defendant MVPD's actions are based on its considered calculation that it will receive no net benefit from carriage of the complainant's programming under the terms proposed by the complainant.[24] Adhering to this precedent, the Bureau found the written evidentiary record demonstrated that Comcast treated beIN differently from NBCSN "not based on its lack of affiliation with Comcast, but rather based on non-discriminatory, legitimate business reasons – in this case, 'a straight up financial analysis.'"[25] The Bureau made this finding "for two reasons: (1) there is no evidence that Comcast would benefit commercially from beIN's carriage; and (2) Comcast has provided sufficient evidence to establish that it not only would derive no commercial benefit from beIN's carriage, but also could, in fact, suffer commercial harm from continued carriage of beIN."[26]

In its Answer, Comcast demonstrated that it undertook precisely the type of "detailed, concrete" business evaluation that the court in *Tennis Channel* and the Commission in *GSN* found to be compelling evidence of legitimate commercial considerations.[27] During negotiations with beIN, Comcast conducted an objective pre-drop assessment of the appeal of the beIN networks to Comcast customers relative to the economics of beIN's proposal.[28] Based on this analysis, Comcast concluded that it would not derive any economic benefit – and would instead

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[24] *See Tennis Channel*, 717 F.3d at 987; Order ¶ 7.

[25] Order ¶ 26 (quoting *Tennis Channel*, 717 F.3d at 987).

[26] *Id.*; *see also GSN Order* ¶¶ 81-82 (similarly finding that "GSN has not established that Cablevision's decision to distribute it on the premium sports tier was anything but a reasonable business decision leading to lower costs and increased profits in a competitive environment," based on the evidence put forward by Cablevision and not countered by GSN).

[27] *See* Comcast's Answer to Second Complaint, MB Docket No. 18-384, ¶¶ 46-50 (Feb. 11, 2019) ("Second Answer").

[28] *See id.*; Declaration of Andrew Brayford ¶¶ 16-21, 31, attached as Exhibit 1 to Second Answer ("Brayford Decl. II").

lose money – if it were to accept beIN's unreasonable renewal demands.[29] Following expiration of the parties' carriage agreement, Comcast conducted post-drop viewership analyses, which showed minimal customer reaction to the beIN expiration and confirmed the reasonableness of Comcast's business judgment.[30] As the Bureau explained:

> [A]fter dropping beIN-E and beIN, [Comcast] lost approximately **{{ }}** of the approximately **[[ ]]** million customers authorized to view the beIN Sports networks, accounting for about a **{{ }}** annual loss in margin. Compared to the approximately **[[ ]]** annual cost of carriage under the expired terms and the **[[ ]]** annual cost of carriage under beIN Sports's proposed terms, this represents a savings of approximately **{{ }}** and **{{ }}**, respectively. These numbers support Comcast's contention that it had already been overpaying for carriage of the beIN Sports networks under the expired terms of the program carriage agreement, and that beIN Sports's proposal would be even more adverse to Comcast's business interest. In light of the "clear negative" of an increased licensing fee, [beIN's] failure to demonstrate any "reason to expect a net benefit" from Comcast's continued carriage of beIN on any of the terms proposed by beIN Sports persuades us that Comcast "made a decision based on its business interests regarding carriage."[31]

The Bureau's crediting of evidence of the real-world effects of a carriage decision – in this case, dropping beIN – adhered to *Tennis Channel* and *GSN* in this respect as well, as those decisions similarly credited empirical evidence of the lack of material commercial harm to the defendant cable operators following a negative repositioning of the complainants' networks.[32]

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29 *See* Second Answer ¶¶ 46-50; Brayford Decl. II ¶¶ 16-21, 31.

30 *See* Second Answer ¶ 53; Brayford Decl. II ¶¶ 48-51.

31 Order ¶ 27. Comcast's Second Answer also provided marketplace evidence showing that other MVPDs and OVDs have either dropped beIN or continue to carry its networks only in comparable specialty tiers or packages, further supporting the reasonableness of Comcast's independent business judgment. *See* Second Answer ¶ 51.

32 *See Tennis Channel*, 717 F.3d at 986 ("Perhaps more telling is the natural experiment conducted in Comcast's southern division. There Comcast had in 2007 or 2008 acquired a distribution network from another MVPD that had distributed Tennis more broadly than did Comcast. When Comcast repositioned Tennis to the sports tier (a 'negative repo' in MVPD lingo), thereby making it available to Comcast's general subscribers only for an additional fee, not one customer complained about the change."); *GSN Order* ¶ 75 (noting that the record evidence of actual customer behavior and cost savings following Cablevision's retiering of GSN confirmed that "Cablevision's original assessment was correct that GSN could be retiered 'without having a negative impact on the

In its Second Complaint and Reply, beIN made various *arguments* challenging Comcast's business justifications for rejecting beIN's unreasonable proposals. But, as the Bureau correctly found, beIN submitted no relevant *evidence* "to quantify the ways in which it disputes Comcast's data."[33] beIN failed to do so despite clear guidance in *Tennis Channel* regarding the type of evidence that a programmer could consider submitting to demonstrate a net benefit to the distributor for carriage on the programmer's terms, such as "expert evidence to the effect that X number of subscribers would switch to Comcast if it carried [the network(s)] more broadly or that Y number would leave Comcast in the absence of broader carriage, or a combination of the two, such that Comcast would recoup the proposed increment in cost."[34]

B. beIN's Claim That It Was Unable To Provide Evidence To Meet the Net Benefit Test Is Unfounded and Not Credible.

beIN now claims that it was incapable of providing evidence to satisfy the net benefit test and disprove Comcast's analyses without discovery, placing beIN in a supposed "Catch 22."[35] This is another makeweight. beIN had prior notice of the kind of evidence a complainant should adduce under the net benefit test, as described in *Tennis Channel* and applied by the Commission in the *GSN Order*. beIN also knew that this case could be decided on the merits based on the pleadings and evidence in the record – as noted, beIN had *encouraged* the Bureau to do so. In addition, beIN had the benefit of Comcast's Answer and Surreply in the First Complaint proceeding at the time it filed its Second Complaint (all of which Comcast incorporated into its

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business'" and that the retiering was "a business decision made based on economics, not one that is pretext for a prohibited consideration").

33 *See* Order ¶ 27 n.105.

34 *Id.* ¶ 28 n.113 (quoting *Tennis Channel*, 717 F.3d at 986).

35 Application at 13-15.

Answer in the second proceeding), which detailed and documented the pre-drop viewership analysis that informed Comcast's December 2017 initial counterproposal and negotiating position. The record in the Second Complaint proceeding thus contained hundreds of pages of factual material and multiple sworn declarations that beIN could have disputed with its own evidence. Indeed, beIN's economic experts in the first proceeding, Mr. Zarakas and Dr. Garces, analyzed Comcast's pre-drop viewership analyses at length.[36]

In the Application, beIN raises a newly-minted claim that the "X" (the number of subscribers who would switch to Comcast if it carried beIN broadly) and the "Y" (the number of customers who would leave Comcast if it kept beIN on specialty tiers) in the *Tennis Channel* formulation are figures that Comcast alone possesses.[37] But this is belied by beIN's own pleadings, which contain various assertions about specific MVPDs and OVDs experiencing customer gains and losses depending on how they carry the beIN networks (none of which beIN substantiated in any respect).[38] In addition, beIN also asserted there were 2.4 million visitors to its website dedicated to the Comcast dispute, yet beIN proffered no evidence based on these asserted visits to try to meet the *Tennis Channel* requirements. These arguments show that beIN

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[36] *See* Declaration of William Zarakas & Dr. Eliana Garces, attached as Exhibit 1 to beIN Reply to Comcast First Answer, MB Docket No. 18-90 (June 4, 2018). Comcast rebutted this analysis, *see* Comcast's Motion for Acceptance of Surreply and Surreply, MB Docket No. 18-90 (June 15, 2018), which like Dr. Singer's analysis contained no countervailing evidence that carriage of beIN on the terms demanded would provide a net benefit to Comcast.

[37] Application at 14.

[38] *See*, *e.g.*, Second Compl. ¶ 132 ("**[[**

]]"); *id*. ¶ 44 ("Any motivation for Comcast to keep beIN in the low penetration buy-through packages in order to entice consumers to part with an additional $5-10 of their money every month disappeared when other distributors such as Verizon and FuboTV started offering distribution of beIN in greater penetration tiers in 2013 and 2015, respectively. This means that most (if not all) subscribers purchasing Comcast's Sports and Entertainment or Latino package solely or primarily on account of belN would likely choose to subscribe to these other platforms instead.").

knew the kind of evidence it should adduce to attempt to rebut Comcast's analyses. But, as the Bureau observed, beIN came forward with no evidence whatsoever to substantiate these assertions (or similar ones it made in negotiations with Comcast and others).[39]

To be sure, had there been any evidence of a net benefit to Comcast of carriage of the beIN networks on the terms beIN demanded, beIN's expert, Dr. Singer, presumably would have supplied it. Dr. Singer provided expert testimony and analyses on behalf of the complainants in both *Tennis Channel* and *GSN*. Indeed, it was Dr. Singer's testimony that prompted the D.C. Circuit in *Tennis Channel* to describe the specific type of evidence that might show a net benefit to Comcast of carriage on a programmer's proposed terms, after finding that Dr. Singer's testimony lacked this "obvious type of proof."[40] Yet beIN and Dr. Singer provided no economic modeling of expected gains from broader carriage; no analysis of the supposed 2.4 million visitors to beIN's website (about which beIN provided no proof or any backup); no information from beIN's monthly reports from other distributors about any subscriber gains owing to their carriage of the beIN networks following the Comcast expiration; and no survey evidence.[41] None of this evidence would be based on information uniquely in Comcast's possession.

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[39] *See* Second Compl., Exhibit 12 (**[[ ]]**).

[40] *See Tennis Channel*, 717 F.3d at 986.

[41] Of course, the fact that a program carriage complainant might submit such evidence – more properly in a complaint rather than a reply, so that the defendant has an opportunity to respond to it – does not mean that such evidence will necessarily be persuasive, or that the Bureau could not find for the defendant based on the weight of evidence in the pleadings.

beIN's failure to offer its own affirmative evidence of a "net benefit" to Comcast strongly suggests that no such evidence exists. beIN could not prove its discrimination claims because they are baseless, not because of any lack of discovery.[42]

C. beIN's Criticisms of Comcast's Evidence of the Legitimate Business Reasons for Its Decision Are Baseless and Do Not Warrant Further Proceedings.

None of beIN's claims regarding Comcast's viewership analyses undermines the legitimacy of these analyses or the Bureau's conclusion that Comcast acted based on legitimate business reasons in declining to carry the beIN networks on the terms demanded by beIN.

Comcast's December 2017 Offer. First, beIN takes issue with the fact that the viewership analyses Comcast conducted after expiration of the parties' carriage agreement showed that, even compared against Comcast's December 2017 offer, dropping the beIN networks still yielded a significant annual savings for Comcast.[43] But Comcast has been clear from the start that its inherently predictive pre-drop viewership analyses – which informed its December 2017 offer – were **{{**

}}[44] These considered analyses, even if they erred on the side of assuming beIN had more appeal than it proved to have, do not bespeak any "goof[] up" or violation of Comcast's fiduciary duty to its stockholders, as beIN wrongly suggests.[45] In

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[42] beIN also faults the Bureau for "ignor[ing] [the] evidence that Comcast had denied its customers the benefit" of **[[ ]]**. Application at 18. But, in fact, the Bureau noted beIN's **[[ ]]** discrimination claim in its Order, *see* Order ¶ 23, but properly concluded that Comcast had not discriminated against beIN at all, regardless of the purported "benefits" of beIN's carriage demands. Moreover, as Comcast previously explained, **[[ ]]**. *See* Second Answer ¶¶ 55-56.

[43] *See* Application at 16-17.

[44] *See* Brayford Decl. II ¶ 16; Declaration of Andrew Brayford ¶ 16, attached as Exhibit 1 to First Answer (May 14, 2018) ("Brayford Decl. I").

[45] *See* Application at 16-17. beIN's contention that a decision to renew the beIN networks on existing terms in 2015, a predictive analysis done in late 2017/early 2018 that informed Comcast's initial counterproposal to beIN, and a post-drop empirical analysis conducted in mid-to-late 2018 must all be entirely consistent, or else they are

fact, while Comcast's post-drop analyses confirmed that the projections in the pre-drop analyses were indeed conservative,[46] **{{**

}}.[47] Furthermore, Comcast's December 2017 offer was made in the context of beIN's unusual request for early renewal negotiations – more than 15 months before contract expiration. As such, it reflected an effort to come to a meeting of the minds, particularly in light of beIN's desire to "reach a deal as soon as possible."[48] As Comcast's record testimony explained, the terms proposed were "intended to facilitate more realistic negotiations going forward."[49]

beIN next asserts, without support, that the Bureau should have ignored beIN's exorbitant renewal demands in applying the net benefit test.[50] Such an approach is nowhere contemplated by *Tennis Channel* and would be directly at odds with *GSN*. In *GSN*, the complained-of conduct involved Cablevision's affirmative action in retiering GSN, but the Commission cited GSN's failure to provide "the type of evidence concerning the net benefit of carrying GSN *as requested*

suspect, is not only incorrect, but also overlooks the dynamic competitive environment for video programming distribution where significant changes occur rapidly. As just two examples, DirecTV Now launched in late 2016, and ESPN+ launched in mid-2018. *See generally Communications Marketplace Report*, Report, 33 FCC Rcd. 12558 ¶¶ 47-136 (2018) (describing entry and exit in the constantly-shifting video marketplace, including an OVD marketplace that "continues to expand and change").

46 *See* Brayford Decl. II ¶ 46.

47 *See id.*, Attach. B; *see also id.,* Attach. A (noting that **{{ }}**).

48 *Id.* ¶ 26.

49 *Id.* ¶ 30.

50 *See* Application at 16.

[by GSN] that would meet the *Tennis Channel* standard" in finding that Cablevision had acted based on legitimate business reasons.[51]

Other Comcast-Affiliated Networks. beIN further contends that the net benefit test should be rewritten to require speculative consideration of how Comcast's viewership analyses might affect carriage decisions across Comcast's portfolio of networks, including its affiliated networks.[52] That is not the law. The Bureau properly adhered to the net benefit test, as applied in *Tennis Channel*, by examining the reasonableness of Comcast's business decisions based on the carriage terms actually demanded by beIN, rather than speculating about other potential carriage scenarios or decisions. This approach is also consistent with the Commission's decision in *GSN*, where the Commission found that Cablevision did not discriminate against GSN on the basis of affiliation despite GSN's argument that the Commission should consider evidence that Cablevision did not contemplate retiering other networks, including affiliated networks.[53]

SEP Tier Subscriptions. As a last gasp, beIN argues that Comcast did not appropriately consider any loss of subscriptions to its SEP tier as a result of the beIN expiration.[54] But that argument is equally meritless. As the Bureau observed, beIN's offer was conditioned on placement of the beIN channels on tiers that **[[**

]].[55] Therefore, even if Comcast had acceded to beIN's demands for broader distribution, Comcast would *still* lose revenue from customers who dropped the SEP tier because any customers who had been subscribing to the

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51 *GSN Order* ¶ 81 (emphasis added).

52 *See* Application at 19.

53 *GSN Order* ¶ 32.

54 Application at 19-20.

55 *See* Order ¶ 27 n.105.

SEP tier primarily or solely to watch beIN presumably would leave that tier once the programming was more widely available on other tiers.[56] Those same subscribers presumably would stop subscribing to the SEP tier if beIN was no longer available on Comcast, as well. In other words, loss of subscriptions to the SEP tier (and resulting revenue loss from SEP tier add-on fees) would occur whether Comcast acquiesced to beIN's demands for carriage on more widely penetrated tiers or discontinued carriage of beIN. For that reason, it was appropriate for the Bureau to consider only lost margins from customers who would leave Comcast's video service (or video and broadband services) altogether if Comcast no longer offered beIN.

Moreover, to the extent beIN now argues that losses to the SEP tier would be material to the net benefit test, this is directly contrary to its prior position that any losses from removal of its programming from that tier would be minimal.[57] In any event, given the massive savings that Comcast experienced by rejecting beIN's demands, it is readily apparent that beIN's claims – even if assumed to be plausible, despite their lack of any evidentiary support – would have no material impact on the financial analysis and the ultimate conclusion that Comcast's actions were based on legitimate business reasons.

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56 *See id.*

57 For example, beIN has claimed that **[[ ]]**, beIN Reply to Comcast Second Answer, MB Docket No 18-384, ¶ 99 (May 6, 2019), that "the loss of [SEP tier] subscriptions from the move of beIN to a broader distribution would be modest," *id.* ¶ 114, and that any incentive for Comcast to maintain beIN in lower-penetration tiers "disappeared when other distributors such as Verizon and FuboTV started offering distribution of beIN in greater penetration tiers" because "most (if not all) subscribers purchasing Comcast's [SEP tier] solely or primarily on account of beIN would likely choose to subscribe to these other platforms instead," Second Compl. ¶ 44. beIN's Application ignores the fact that it has previously made these assertions. In addition, as Comcast explained in its Second Answer, beIN's availability on Sling TV also offset any potential lost margins from reduced subscriptions to the SEP tier. *See* Declaration of Justin Smith ¶ 30, attached as Exhibit 2 to Second Answer. This is another reason the Bureau was correct to discount any tier downgrade losses in this regard.

D. The Commission Should Reject the Remainder of beIN's Scattershot Efforts To Justify Further Proceedings.

beIN's other attempts to manufacture "significant and material factual disputes" that would warrant further proceedings should similarly be rejected. The Bureau was right to discount beIN's specious claims regarding **[[**

]].[58]

beIN again misrepresents the record when it claims that there were "inconsistencies" in Comcast's answers to its first and second complaints with respect to content certainty.[59] Comcast highlighted that the lack of certainty in the content beIN proposed to offer was a factor in its decision-making process in its Answers to *both* complaints.[60]

And beIN's assertion that Comcast "revealed that NBC Sports provides less certainty than beIN did about the programming it offers" is also demonstrably false.[61] Comcast's Answer fully rebutted this argument with supporting expert testimony.[62]

IV. THE BUREAU CORRECTLY FOUND THAT BEIN-E AND UNIVERSO ARE NOT SIMILARLY SITUATED.

The Bureau was likewise correct in determining that beIN did not make out a *prima facie* showing that beIN-E is similarly situated to Universo.[63] Looking solely to beIN's own evidence,

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58 *See* Second Answer ¶ 52 n.149.

59 *See* Application at 19.

60 *See* Second Answer ¶¶ 14-17; Brayford Decl. II ¶¶ 14, 22, 26, 27, 29, 32, 41; First Answer ¶¶ 9, 15, 18, 60; Brayford Decl. I ¶¶ 14, 22, 25, 26, 28, 32, 41.

61 *See* Application at 19.

62 *See, e.g.*, Supplemental Declaration of Peter Litman ¶¶ 19-20, attached as Exhibit 4 to Second Answer.

63 *See* Order ¶ 19.

the Bureau properly concluded that beIN-E and Universo are fundamentally different networks due to the vast disparity in programming minutes dedicated to sports programming featured on each of the networks. beIN-E is a sports network and Universo is not.[64] "beIN-E and Universo are not, overall, of the same programming genre, a key factor in determining whether networks are similarly situated."[65]

Because beIN-E and Universo are not even of the same genre, the Bureau readily found that other factors highlighted by beIN – such as a minor overlap in advertisers and similar ethnic backgrounds of the networks' target audiences due to both being Spanish-language networks – do not support a finding that the networks are similarly situated.[66] And, while not considered by the Bureau in its pre-merits *prima facie* determination, the detailed evidence that Comcast provided in its Answer removes any doubt that beIN-E and Universo are not similarly situated.[67]

V. THE BUREAU WAS CORRECT TO DENY MR. SAHL ACCESS TO HIGHLY CONFIDENTIAL INFORMATION.

beIN's claim that it was prejudiced because one of its experts, Mr. Sahl, did not have access to a discrete set of Comcast's most competitively-sensitive business data is especially egregious. Because of Mr. Sahl's ineligibility under the protective order, beIN claims that its new expert, Mr. Sklar, "was unable to address Comcast's benefit analysis."[68] But beIN never

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64 *Id.*; *see also* Declaration of Antonio Briceño ¶ 20, attached as Exhibit 8 to Second Compl. (stating that, in 2017, **[[**

]]).

65 Order ¶ 19; *see also Herring Broadcasting, Inc. d/b/a WealthTV v. Time Warner Cable, Inc.*, Memorandum Opinion and Order, 26 FCC Rcd. 8971 ¶¶ 22-26 (2011) (finding differences in networks' overall programming and other factors to be dispositive that the networks at issue were not similarly situated); *GSN Order* ¶¶ 48-51 (same).

66 *See* Order ¶ 20; *id.* ¶ 20 n.78 (citing *2011 Program Carriage Order* ¶ 14 ("[I]t is unlikely that programming would be considered 'similarly situated' if only one of these factors is found to be similar.")).

67 *See* Second Answer ¶¶ 18-45.

68 Application at 23-24.

represented to the Bureau or Comcast that Mr. Sahl (or Mr. Sklar) sought access to any HCI relevant to Comcast's viewership analyses. Rather, beIN represented that Mr. Sahl sought access to "information about NBC's relevant practices and the information NBC provides to distributors" concerning *programming content covenants* in third-party programming agreements, in response to testimony from Comcast's expert, Peter Litman, about those covenants.[69] In other words, the HCI at issue – by beIN's own account – related to the lack of content certainty in beIN's various proposals and had nothing to do with Comcast's viewership analyses. beIN's claims of prejudice over the Bureau's determination of Mr. Sahl's ineligibility mischaracterizes the record and, like beIN's other claims, is a post-hoc position and simply not credible.

In all events, the Bureau correctly found that granting Mr. Sahl access to HCI pertaining to NBC's content covenants in third-party programming agreements would be inconsistent with the terms of the protective order, to which beIN consented.[70] Comcast explained in its objection that Mr. Sahl is both involved in the analysis underlying the business decisions of competitors of Comcast and NBCUniversal and participates directly in those business decisions.[71] In fact, when

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69 beIN Opposition to Objection to Protective Order Access, MB Docket No. 18-384, at 2-3 (Feb. 25, 2019) ("In his Declaration, Mr. Sahl testified that, in his view, representations beIN has made to Comcast about beIN's rights to soccer programming afforded Comcast sufficient certainty. Among other things, Mr. Sahl testified that 'NBC has itself certainly negotiated content covenants **[[** **]]** and that he is 'certain NBC has offered such assurances to its own distribution partners to gain carriage, as is standard in the industry.' In rebuttal, Comcast's expert witness Mr. Litman provides information about NBC's relevant practices and the information NBC provides to distributors. Comcast is now trying to deny Mr. Sahl access to *that information*.") (emphasis added).

70 Email from Steven A. Broeckaert, Senior Deputy Chief, Media Bureau, FCC, to Matt Friedman, Counsel for beIN Sports, LLC, and Michael Hurwitz, Counsel for Comcast, MB Docket No. 18-384 (Apr. 5, 2019) ("April 5 Order").

71 *See* Comcast Objection to Protective Order Access, MB Docket No. 18-384 (Feb. 21, 2019) ("Comcast Objection"); *see also* Comcast Reply to Opposition to Protective Order Access Objection, MB Docket No. 18-384 (Feb. 27, 2019).

the Bureau issued its ruling, Mr. Sahl was simultaneously representing a party directly in negotiations with Comcast.[72] The relevant language in the protective order is standard Commission language that has been construed broadly to ensure that Commission processes are not a conduit for a party's highly sensitive commercial information to be used in competitive decision-making.[73] Notably, Mr. Sahl did not seek access to Comcast's and NBCUniversal's HCI during the First Complaint proceeding and still submitted expert reports.

Moreover, the Bureau took steps to ensure that its decision with respect to Mr. Sahl would not unfairly prejudice beIN. With no objection from Comcast – and more than a month after the original deadline of beIN's Reply – the Bureau granted beIN "any reasonable extension beIN requests *in addition to* the 10 days previously provided" in order to identify additional experts and finalize its Reply.[74] beIN thus had the benefit of (a) an *additional* two months for its outside counsel and four other outside consultants – for whom protective order access was immediately granted – to draft its Reply and (b) a mutually agreed upon "reasonable amount of time" for the integration of an additional outside expert. beIN's voluminous Reply demonstrates

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[72] *See* Comcast Objection ¶ 5 ("The **[[** **]]** *are* a competitor of Comcast within the meaning of the Protective Order; in fact, **[[**

]])

[73] As the Commission has consistently recognized, "disclosure of programming contracts between multichannel video program distributors and programmers can result in substantial competitive harm to the information provider." *See, e.g.*, *Examination of Current Policy Concerning the Treatment of Confidential Information Submitted to the Commission*, Report and Order, 13 FCC Rcd. 24816 ¶ 61 (1998). For such reasons, the Commission often provides parties with the very type of enhanced confidentiality protections that it granted in this proceeding. *See, e.g.*, *beIN Sports, LLC, Complainant, v. Comcast Cable Communications, LLC and Comcast Corporation, Defendants Request for Enhanced Confidential Treatment*, Order, 33 FCC Rcd. 4641 (MB 2018); *EchoStar Satellite L.L.C. v. Home Box Office, Inc.; Request for Enhanced Confidential Treatment*, Order, 21 FCC Rcd. 14197 (MB 2006); *News Corp., General Motors Corp., and Hughes Electronics Corp.; Order Concerning Second Protective Order*, Order, 18 FCC Rcd. 15198 (MB 2003).

[74] April 5 Order (emphasis added).

the benefits of so much extra time – totaling 226 pages with *three* expert reports. There is no basis for beIN's claim that it was unfairly prejudiced by the Bureau's decision.

VI. THE COMMISSION SHOULD REJECT BEIN'S REQUEST TO CONVERT THIS PROCEEDING TO PERMIT-BUT-DISCLOSE.

Finally, beIN's Application includes a perfunctory request for "permit-but-disclose" status in this proceeding. This request should be rejected.

beIN falls far short of its burden to establish that this case "involves primarily issues of broadly applicable policy" [75] for "which broader public participation would benefit the public interest."[76] beIN attempts to support its request by listing several soccer players whose teams are featured on its niche networks, on the theory that "[e]very soccer fan should care" about beIN's dispute with Comcast.[77] This obvious attempt to influence the Commission by generating comments from third-party soccer fans or other parties who are not steeped in the facts of this proceeding is simply the latest procedural gamesmanship by beIN. The request is baseless and would unduly prolong and complicate this proceeding. It is also directly at odds with beIN's repeated requests for expedited treatment. This case is no different from any other "restricted" proceeding that centers around "the rights and responsibilities of specific parties."[78] Accordingly, there is no reason for the Commission to depart from the general prohibition on ex parte communications with the tribunal in an adjudication.

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75 47 C.F.R. § 1.1208 Note 2.

76 *Amendment of the Commission's Ex Parte Rules and Other Procedural Rules*, Notice of Proposed Rulemaking, 25 FCC Rcd. 2403 ¶ 26 (2010); *see also* 47 C.F.R. § 1.1208 Note 2.

77 *Cf.* Order ¶ 28 (noting the "niche audience" of the beIN networks).

78 47 C.F.R. § 1.1208 Note 2.

VII. CONCLUSION

For all of these reasons, the Application should be denied.

Respectfully submitted,

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August 16, 2019

CERTIFICATE OF SERVICE

I, Samuel Eckland, certify that on this 16th day of August 2019, I caused a true and correct copy of the foregoing Opposition to Application for Review to be served by overnight mail (Highly Confidential Version) and electronic mail (Confidential Version and Public Version) on the following:

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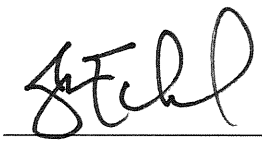

Samuel Eckland

August 16, 2019